No. 887

FILE
APR 20 1
HAROLD B. WILLE

IN THE

SUPREME COURT

OF THE

United States

October Term, 1955

EUGENE F. EVARTS, MONROVA S. EVARTS, EUGENE K. EVARTS,
Appellants, Petitioners,
vs.
C. J. JONES, C. S. JONES, JONES BROTHERS, C. J. JONES & ASSOCIATES, SAN ANTONIO HEIGHTS TRACT, JOHN DOE I-V, JANE DOE I-V, BLACK & WHITE COMPANY I-V, DOE & DOE CORPORATION I-V, JOHN-GREEN doing business as co-partnership,
Appellees.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ELON G. GALUSHA
511 Wilshire Office Bldg.
1127 Wilshire Blvd.
Los Angeles, California
Attorney for Appellants, Petitioners.

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Appellees.

No.....

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners, Eugene F. Evarts, Monrova S. Evarts, and Eugene K. Evarts, pray that a writ of certiorari issue from this Court to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on December 9, 1955 and Re-hearing denied January 23, 1956.

OPINIONS BELOW

The Order of the Southern District Court of California, Central Division, the minute entry judgment, dismissing declaratory relief action for lack of jurisdiction (Tr. 34), after listening to oral argument (Tr. 40-41) stating contracts in question were of state construction. And denying a rehearing (Tr. 42).

JURISDICTION

Judgment of the 9th Circuit Court entered December 9, 1955, (Tr. 40) Petition for Rehearing denied January 23, 1956 (Tr. 42) jurisdiction of this Court is invoked under 28 USCA Sec. 1254; 8 USCA Sec. 41; 28 USCA Sec. 43; 28 USCA Rule 19; 1944 24 CFR, Supp. National House Act as Amended, Title 603-604 pursuant to 610, especially Part 702 50-56, H-2 Emergency War Housing; the Commissioners Rulings and Orders of Federal Agencies including FHA, OPA, WPB, HHFA, OTC, authorized under 13 FR 3935 1 CFR Part 2, authorized (50 Stat. 305; 44 USC 311 (d), 49 Stat. 502, 50 Stat. 304; 44 USC 307, 311 (e); 12 FR 5692 amended 13 FR 4419-4739; 24 CFR 801.1 209, Sec. 853.2-1.) 56 US Stat. 179 (4) (5); Article I, Sec. 3, 13 of California Constitution; VI and XIV Amendment of United States Constitution.

QUESTIONS PRESENTED

1. Are the Constitutional guarantees, and NHA Act which are for a public purpose waived as against purchasers in the San Antonio Heights Subdivision Tract in Long Beach, California?

2. Could appellees after signing required agreements with the Federal Government for release of critical building materials, (to build and sell H-2 Subdivision Homes during period declared by the President to be a National Emergency) VIOLATE these contractual obligations, by increasing the "maximum approved sales price" and the "maximum interest rate and add charges" not allowable for escrow costs, under 24 CFR, with immunity and to purchasers' loss?

3. After receiving full payment of $983. plus 6.6% interest for equity therein, could appellees refuse to deliver a deed to appellants on the terms stated in the 1st and 2nd sales contract, and interpreted 1947 in *Reed v. Jones Bros.*, LBC #13040?

4. Could appellees properly include restriction in the 2nd Contract not provided for in the 1st, where there was no new consideration given, and deprive appellant of ownership rights, such as to rent, transfer or sell the equity in the property after possession?

5. Could appellees legally demand with due process, payment be continued by buyers for 2 years more after equity had been paid in full plus 6.6% in 1946? And then demand appellants sign escrow instructions that would waive their rights to sue for refund of overpayments (made under duress) and to:

A. Waive sellers' obligation to pay his share of escrow expenses as required by NHA, the Contract and by local custom?

B. Waive right for itemized statement of money paid on account and credits receipted for and itemized costs claimed?

C. Waive right to a mutually binding and equitable escrow agreement conforming to the Sales Contract?

D. Waive right to secure fire insurance policy, fully paid for as is stated in the Contract?

E. Waive rights to credits and statement for fire insurance and tax money paid in by buyers as impounds under FHA loan?

F. And forfeit Contracts to appellees?

6. Could appellees legally alter the terms of this written contract, by unsupported PAROLE evidence, claiming 6.6% interest, when the Amortization payment on the loan in the contract specifically set out on this loan portion to be $28.31 per month, as this figure is arrived at by using the 4½% FHA Amortization Schedule, which was introduced as an exhibit in *Reed v. Jones* case LBC #13040 and also introduced in Quiet Title case *Jones v. Evarts,* LBC #16869. Where *Reed* case on the tract, in which appellants' property was located, established 4½% on the FHA loan?

7. Can appellees 2 years after the contract has been in force, and after notice was mailed to buyers, showing FHA interest to be 4½%, change their pur-

pose to buyers' detriment as to the rate of interest by upgrading it to 6.6%?

8. Could appellees when refusing permission for appellants to apply for Substitution of Liability on their FHA loan balance after they receipted full payment of their equity, and after refusing full tender of FHA loan balance, still refuse to give a deed to appellants and then declare forfeiture of their contract and all moneys invested in the property, contrary to the spirit and letter of the Contract and oral conversation by the sellers' agents at time of purchase, and in violation of NHA, WPB, EPC Act, OPA Rules & Orders, and do so without redemption rights being allowed?

9. Can the State court deny Eugene F. Evarts his full day in court and a trial on the merits, after full tender had been made through escrow, and after he had acted as a prudent man in employing and paying counsel to answer for him and deny him the protection of CCP 286-473?

10. Can the State court apply the 4½% interest rate rule on FHA loan balance in *Reed v. Jones* case #13040, 1947, where the Contract Forms are identical with appellants', and arbitrarily apply 6.6% interest rate on appellants' loan balance, in the *Jones v. Evarts* case #16869, and administer equal application of the law and due process to appellants?

11. Did the method adopted by the State courts prevent issuance of deed to appellants in violation of State escrow laws and thus deny them due process?

12. Can Eugene K. Evarts be refused the right to testify for his property rights in his own behalf, against different parties and issues, after all appellees had answered and filed a cross-complaint in his action L.A. #597850, thus waiving their claim to *res adjudicata,* without denying him due process of law and equal application of the law, where he was not made a party to the Quiet Title ~~against him~~, when he was in joint possession of said property?

13. Does the Federal law permit the method adopted by the State court to deprive appellants of their property rights of this house which carried Emergency War Housing Loan Number 604-21810, under FHA Title 604, Section 702, 1-56, 24 CFR.

STATUTES INVOLVED

The pertinent statutes involved are: 28 USCA Rule 57; Rule 40; Rule 63; 28 USCA Sec. 41 (1); Sec. 2072; Sec. 1331; Sec. 1342; Sec. 1343; Sec. 220; Sec. 400; NHA as amended and Emergency Price Control Act 1942 as amended.

STATEMENT

The Circuit Court of the United States affirmed a judgment dismissing this declaratory relief action, is in violation of the United States Constitution, lack of Due Process and Equal Application of the Law, 24 CFR Part 702, 50-56, ~~as amended~~ and application for priority construction material assistance, and application for FHA Title-604 Loan Insurance guaranteeing to buyers and

all subsequent buyers against increasing the maximum approved ceiling sales price and limiting extra charges to those allowable by NHA, (Tr. 4-5-9) Commissioners Rules and Orders of FHA, OPA, HHFA and War Housing Insurance Law.

The Federal maximum approved ceiling sales price (Tr. 4, l. 15) was set by Federal FHA Commissioner and/or other Commissioners of price fixing Federal agencies at $4500. when sold to Eugene F. and Monrova S. Evarts, petitioners, in 1944. The sales contract on this home is not subject to any State law or statute in violation of the Federal law, or of rules and orders of Commissioners and Federal agencies, Edicts and Executive Order made by President of U. S. in time of war.

There were 4 Exhibits filed with the oral argument of appellants before the Circuit Court. Contracts of—

1. February 17, 1944 (Tr. 4-5) no interest required on appellees' equity.
2. August 1, 1944 (Tr. 4, l. 23; 5, l. 2; 8, l. 20) 6.6% interest on appellees' equity, added to buyers' costs.
3. Purport escrow instruction of June 6, 1948 (Tr. 6, l. 20) which credited only $1330. of $2879.33 paid on account, appellees stated 6.6% interest was charged on the FHA loan in computing figures, ~~This~~ And superseded the 4½% originally figured by using regular FHA amortization chart.
4. Copy of Loan Commitment for new $4700 loan, (Tr. 10, l. 10).

The first Contract showed payment of $50. on account of purchase price (Tr. 4-5). The deferred payment of appellees' equity was $683.23 on August 1, 1944.

In 1946 (Tr. 5, l. 22; 6, l. 16) appellants had paid appellees equity in full, but they refused to execute a deed to them as requested (Tr. 8, l. 24). Appellants continued payments (to avoid litigation at this time) and overpaid appellees an additional $480, on equity claim until June, 1948 (Tr. 7-12) when $5.67 was returned by appellees to them, who then claimed overpayment (Tr. 9, l. 1) had been made. Appellees still refused to give necessary clearance approval to allow appellants to apply for Substitution of Liability of FHA loan balance, demanding appellants sign escrow instructions that forfeited many of appellants' contractual rights.

That in addition to the $2879.33 paid appellees, appellants tendered for a deed by an escrow commitment a further sum of $4700, making an offer to pay in all, $7500. for the home on which the maximum ceiling price was $4500. for a deed. The tender was unjustly refused.

In September, 1948, prior to appellants filing their equity case LBC #15081 (Tr. 10, l. 22) the Long Beach Superior Court had in 1947 handed down a decision in *Reed v. Jones Bros.*, LBC #13040 (Tr. 12, l. 24) filed by a committee representing several hundred buyers in San Antonio Heights Tract #12854) that 4½% interest of FHA loan balances was the maximum interest that could be charged, and not the 6.6% interest.

The 2nd Contract of August 1, 1944 (Tr. 5-3-18) stated appellants could not rent their property without written consent of sellers, which appellees refused to give. This was detrimental to buyers, constituted a denial of due process to buyers, who had acquired all property rights in said property by virtue of money paid outside of escrow, possession given and taken by buyers under both Contracts (Tr. 11-13).

There was no discussion of the Contract of February 17, 1944 by the State Court in LBC #15081 where all three contracts were placed in evidence (Tr. 8-15). This was a denial of Due Process. This said action was brought by buyers to ascertain amount due under the Contracts to be paid to acquire a deed. (Tr. 13-4). There was none outstanding to appellees on their equity. The Federal law allows a FHA loan to be paid off in full at any time with only a nominal cost to the individual.

Before the appeal court heard the appeal #15081, C. J. Jones filed (Tr. 13-25) action LBC #16869 to Quiet Title against appellants, Eugene F. and Monrova S. Evarts (Tr. 13- 25, 14-1).

A demurrer of an appeal pending filed for Monrova Evarts (Tr. 30-31) was overruled, counsel of buyers neglected to appear for Eugene F. Evarts though employed to appear for both in said action. Appellees' counsel knew buyers counsel had been employed to appear for both of them, but became ill. A default was taken against Eugene F. Evarts without his knowledge after his attorney neglected to appear for him. (Tr.14-21.) Their attorney died before the trial (Tr. 14-9).

The request by Mrs. Evarts to have her husband act in Pro. Per. for her was denied, (Tr. 15-7) as also her motion for *Duces Tecum* to Produce Accounts and Records required to be kept by FHA on these properties, were denied (56 US Stat. 179 (4) (5)). Had these records been produced the excessive charges that appellees had demanded buyers pay in violation to the maximum sales price on the property and other violations would have appeared to the court. Failure of this information deprived appellants of their full day in court and due process of law, in violation of their Constitutional rights.

In 1950, two years after full cash tender to appellees in 1948, herein above cited, appellants made and delivered to Eugene K. Evarts (Tr. 10-22, 12-7) for valuable consideration, a deed to him for 90% interest in their property, retaining 10% therein and placed said Eugene K. Evarts in joint possession of said property with buyers. (Tr. 12).

Appeal was taken in LBC #16869 (C. J. Jones Quiet Title action) by Monrova S. Evarts. Judgment was affirmed. She was denied benefits of Reporter's Transcript (Tr. 18) though fully paid for. It was not delivered by the Reporter in time to be considered by the court, even on Motion of Rehearing of the appeal and not considered on a hearing by the State Supreme Court for the same reason. This is claimed a denial of due process, denying Eugene F. Evarts also their full day in court (Tr. 12).

Appellees subsequently dispossessed appellants and Eugene K. Evarts who was not mentioned in complaint or *Lis Pendens,* of possession of their property. (Tr. 17-6).

In 1952 Eugene K. Evarts filed action #597850 (Tr. 16, line 16; 31-32) against C. J. Jones, C. S. Jones, Jones Bros., C. J. Jones & Associates and San Antonio Heights Tract to quiet his title to said property. The parties to this action were different (Tr. 18, l. 18) as was also the cause of action than #16869 and #15081. Judgment against buyers in their action #15081 was not conclusive against Eugene K. Evarts or, in #16869 Jones' action.

Eugene K. Evarts was denied due process when not permitted to testify on his trial. The court holding the Quiet Title action of C. J. Jones (#16869) was conclusive against him, because he was in privy with his grantors (Tr. 17, l. 9). He was not. He had acquired his title after their full right to a deed had been fully established by payment of large percentage of the purchase price and full tender of balance, plus having possession, and by full payment of Jones' deferred equity.

Eugene K. Evarts' trial was had, after each of the parties had filed an Answer and Cross-complaint. In this action the court without notice, struck all parties except C. J. Jones, and judgment was granted only to him, on his Answer and Cross-complaint over the objections of Eugene K. Evarts' counsel (Tr. 18, l. 18).

That all the procedures above set forth herein are claimed to be a denial of due process of law established

by *Reed v. Jones Bros.* in LBC #13040 and Article 1, Sec. 3, 13 of California Constitution and VI and XIV amendment of Federal Constitution. (Tr. 19, l. 1; 20, l. 1).

REASONS FOR GRANTING WRIT

1. That the failure of the State court to direct issuance to appellants Eugene F. and Monrova S. Evarts and Eugene K. Evarts of a deed in accordance with buyers' Contract is against law, and was in violation of buyers' Property Rights under FHA Title-604 of NHA, and a direct violation of State courts decision in *Reed v. Jones Bros.* in 1947, fixing 4½% on FHA loan balances of buyers under these Contracts. And not 6.6% interest on FHA as this would increase the total purchase cost above the Maximum Approved Ceiling Sales Price, over the amount allowed by law. And this was against public policy in 56 US Ct. 179 (4) (5) and would in that 6.6% interest constitutes an unjust enrichment (Windfall Profits) in violation of the letter and spirit of appellees' Agreements for H-2 priority building material assistance, at the time of a national war emergency declared by the President under powers granted him by Congress. These Subdivision Contracts included all the protection of provisions of the NHA as though fully set forth therein, in each contract, and in appellees' Contracts signed by them with the Federal Government, to secure prority assistance for construction and financing of houses of this subdivision, which carried War Housing Insurance 24 CFR Part 276-8; See—

National Housing Act (1944) 24 CFR Supp. p. 147 and esp. Part 702.10 (2) p. 1824; 702-

50 (a)-56 p. 1841; 702.51 (e) p. 1834 (1) 1841; 702.51 (c) (4) p. 1842; 702.53 (a) p. 1843;

24 CFR Sec. 202.8; Sec. 283.6; Sec. 221.17;

Howard v. U. S., CCA La. 125 F. 2d 986, 991;

12 USCA par. 64, *Garey v. Wilder*, CCA Ill. 121;

Nelson v. Penn.—very recent US Sup. Ct. Decision. (Fed. court has jurisdiction.)

2. For appellees to refuse to place deeds to appellants in escrow as provided for in the Emergency War Housing Contracts, when all payments had been paid to them for their equity, was against public policy and Federal Housing law, made to protect citizens living in critical war areas and of fixed and limited means, and to stabilize prices, to eliminate profiteering, to prevent manipulation of public funds for private aggrandizement, and control excessive prices leading to inflation.

Emergency Price Control Act as Amended:

Yakus v. U. S., 321 US 414, 88 L.ed. 834; Sup. Ct. 660;

(1943) 24 CFR Sec. 202.8; Sec. 277.4b; Sec. 283.6; Sec. 202.7e;

(1944) 24 CFR Part 702.11 (3) (c) (1) p. 1836;

Osborn v. Osborn, 42 C (2) 363 (2).

3. The refusal of appellees to accept full cash tender offered through escrow and deliver a deed to buyers, then subsequently throw them out of possession of their property, and take and store their belongings, was against public policy and against the law, as established by the State of California to prevent duplicity in dealings and to keeping families off charity rolls and protect their property rights under the Federal Constitution and Escrow Law of California Statute (1947) Sec. 12—2126, 2130.

H. O. L. C. v. Wash., 161 P. 2d 353, 108 Ut. 469;
(1942) *Cavos v. Geihsler*, 109 Colo. 163; 123 P. (2) 823 note 1;
Hasson v. Long Beach, 83 CA (2) 745, 198 P. (2) 787;
Snyder v. Mass., 291 US 105;
Screws v. U.S., 324 US 95;
Brooks v. Fidelity Loan Assn. 54 Cal. App. (2) 130;
Estate of Reed, 25 CA (2) 367.

4. Appellees further violated State and Federal decisions by disturbing the ownership of Eugene K. Evarts who was not made party to their suit or *Lis Pendens*, constitutes denial of due process and equal application of the law.

Miller v. Long, 152 F. (2) 196, 197;
Moore v. Eire Co. Agr., 12 Fed. Rules 6, note 2.

5. The District Court erred in failing to realize in a Declaratory Relief action between parties resident

of the same state, there is required no diversity of citizenship to confer jurisdiction on the Federal court, under 28 USCA Rule 57, and matters falling under Emergency Control Act of 1942 as amended, NHA, OPA, WPB, HHFA, FHA, Exc. Edicts, Commissioners Acts, Orders & Rulings and other Housing Acts of Congress.

Brown v. Allen, 233 US 525;
Jacobson v. Mass., 197 US;
8 USCA Sec. 43;
Art. 1, Sec. 3, 13 of California Constitution;
XIV Amendment of United States Constitution;
Taylor v. West. States Land, etc., 77 CA (2) 869;
Mooney v. Holohan, 294 US 103.

6. The 9th Circuit Court permitted filing of Oral Argument and 4-Exhibits by comparing the Exhibits, substantial evidence of the variance is evidenced.

Picking v. Penn R. Co., 155 F. (2) 242.

7. The 9th Circuit Court's Opinion failed to uphold Congressional Acts and Federal law wherein any cost necessarily incurred by buyers, from the time of purchase of their home to the time receiving title policy showing property clear of all debt, and a deed recorded, costs MUST NOT EXCEED the MAXIMUM allowed Approved Ceiling Sales Price of $4500. And the total payment "of whatsoever kind or character paid in order to acquire a deed" is included in this "Maximum Approved Sales Price."

(1944) 24 CFR Supp. Part 702.56 (a) (c) p. 1844;

Fullerton Krueger Lumber Co. v. No. P. R. Co., 266 US 435;

Pub. Serv. Com. v. Baterville Tel. Co., 284 US 6;

298 US 296; 298 US 238.

8. Is not the Principle to lead the Incident, or Edicts and Exe. Orders of the President of the United States and Commissioners fixing Federal Agencies' Rulings, more important than whether the State or Federal court enforces their Federal Rulings and Orders and Laws.

24 CFR Sec. 801.

9. Appellants are informed since the hearing in the Circuit Court the FHA loan on this property has now been paid off and there is no longer a question of Substitution of Liability, would it not be the duty of this Court to direct appellees to issue the deeds to appellants, and pay back all damages and expenses they have sustained?

CONCLUSION

The public policy of the State and Federal courts should be construed so as to conform to the Constitution of United States property rights also protected under NHA, 24 Code of Federal Regulations and to protect all buyers of FHA Title-604 H-2 homes under the principles handed down by Congress binding on all

State and Federal courts in favor of appellants, petitioners.

This Court should take jurisdiction herein, in order to carry out the purpose and spirit of the FHA laws and uphold the rights of American citizens of small means in the possession of their FHA financed properties.

There have been many hundreds of property buyers whose rights are involved in like alleged violations, and the status of their FHA Title-604 Contractual Rights are in similar jeopardy locally* and in other places throughout the United States, petitioners are informed.

Appellants have been put to great cost of litigation, in failure to obtain deeds under NHA laws. That this Court has jurisdiction to direct appellees to convey clear deeds to appellants and put them back in possession of their property and give them the relief prayed for in the District Court.

WHEREFORE, by reason of the foregoing facts and law, this Petition for a writ of preemptory certiorari be granted and relief above prayed for be granted appellants.

Respectfully submitted,

Elon G. Galusha

ELON G. GALUSHA
Counsel for Petitioners.

*U. S. District case #18905 TC.PH *Evarts v. Myers, et al.*, another FHA Title 604 case in which substantial violations of price fixing laws were alleged. Case was dismissed by counsel after order to do so by Superior Court and with denial of permission to appeal to Supreme Court. *Re Chetwood*, 165 U. S. 443.

APPENDIX A

OPINION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EUGENE F. EVARTS, MONROVA S. EVARTS, and EUGENE K. EVARTS,	)	
Appellants,	)	No. 14,761
vs.	)	Dec. 9,
C. J. JONES, C. S. JONES, JONES BROTHERS, C. J. JONES & ASSOCIATES, et al.,	)	1955
Appellees.	)	

Upon Appeal from the United States District Court for the Southern District of California, Central Division

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BEFORE: HEALY, BONE, and CHAMBERS, Circuit Judges

PER CURIAM

This case is here on a judgment of dismissal of appellants' complaint for want of jurisdiction.

The complaint shows affirmatively that all parties, both plaintiff and defendant, are citizens and residents

of the State of California. The suit has to do only with a controversy arising out of the construction of a conditional sales contract, presenting no federal question.

Affirmed.

(Endorsed:) Per Curiam Opinion. Filed Dec. 9, 1955.

Paul P. O'Brien, Clerk.

APPENDIX B

PERTINENT CASES CITED

Fullerton Krueger Lumber Co. v. No. P. R. Co., 266 US 435:

"Certiorari proper to review a judgment in a suit in which a right under an Act of Congress was claimed and denied."

Picking v. Penn. R. Co., 155 F(2) 242:

"When a federal statute condemns an act as unlawful, the extent and nature of legal consequences of the condemnation are 'federal questions' the answers to which are to be derived from the statute and federal policy which it has adopted." USCA Const. Art. 6, cl. 2.

In Estate of Perryman, 113 CA 2d (5 USCA Sec. 691, Inc. under Civ. Serv. Ret. Act):

"Rule in these cases is that the Act of Congress prevails over conflicting state law, in a field properly within the jurisdiction of the United States, and to the extent that this field is occupied by the federal law."

298 US 296:

"'The Constitution and the laws of the United States which shall be made in pursuance thereof—shall be the supreme law of the land.' The supremacy of the constitution as law is thus declared without qualification. The supremacy is absolute."

Screws v. United States, 324 US 95:

"That Due Process prevents state action which offends some principle of justice, so rooted in the traditions and conscience of our people, as to be ranked as fundamental."

Cavos v. Geihsler (1942) 109 Colo. 103, 123 P(2) 822—Note 1:

"Where under a contract of sale, a purchaser has performed to the extent that he has a substantial interest in the property, a court of equity will not require him to sacrifice such interest without reasonable opportunity to protect it through *redemption,* such as is afforded in mortgage foreclosure proceedings."

Brooks v. Fidelity Loan Assn., 54 CA (2) 130 (4):

"Speaking of tender unjustifiably r e f u s e d: 'stopped interest running—in fact stopped all the incidents of the original obligation itself, shorn of all its incidental burdens.' "

California Statute (1947) Escrow Laws Sec. 12, Chp. 921, pp, 2126, 2130:

"Escrow Instructions must be mutually binding on all parties."

Osborn v. Osborn, 42 C(2) 363:

"At the time of the execution of the contract of sale, the grantee acquires an equitable title to the estate being sold, the grantor retains the legal title as security for the purchase price. The legal title passes to the grantee at the time of his completion of the conditions precedent, whether or not the escrow holder gives him physical possession of the deed."

Miller v. Long, 152 F(2) 196 197:

"The United States Constitution governs in all state and federal courts and is binding on Congress."

SANCTITY OF FEDERAL CONTRACTS

National Housing Act as Amended—Emergency Price Control Act as amendment—1942.

(1944) 24 CFR FHA:

"Insured mortgage binds the contractor to abide by every regulation included in the particular code under which a loan is made in addition to every applicable regulation, included and set forth in the entire NHA and all its amendments, with the same force and effect as though they were part and parcel of contracts executed for FHA Insurance or Priority Assistance."

(1943) 24 CFR (1941) Secs. 277.4b, 278.11, 16 and 283.6:

"Builders of FHA subdivisions must comply with all contract provisions approved by the Commissioner."

24 CFR Sec. 202.8:

"Commissioner's approval on property for Sale or Rent prior to beginning construction and to the disbursement of any portion of the proceeds of the loan for any property, which is insured, shall submit to the Commissioner a request for preliminary approval of the transaction on a prescribed form, approved by the Commissioner provided for, on this application, shall not relieve the insured from compliance with any regulations."

(1944) 24 CFR p. 147, Sec. 221.17:

Maximum rate of interest on FHA not to exceed 4½%, likewise—Sec. 202.7c and Part 702.51(a)(4) p. 1842:

> "'Approved sales price' shall be the sale price stated for the unit in the application . . . which shall be the total consideration paid as purchase for such unit. . . . There shall be excluded from approved sales price those incidental charges which a purchaser of real estate customarily assumes in the community where the real estate is located."

702.10(2) p. 1834:

> "'Sales price' means the total consideration paid by the purchaser for the dwelling."

24 CFR 702.11 (3)(c)(1) p. 1836:

> "Sales prices . . . shall not exceed the respective maximum amounts permitted by the conditions of the application for priority assistance authority to begin construction."

702.50(a) p. 1841:

> "The purpose of 702.50-56 is the establishment of sales and procedures for taking the construction of private H-2 housing and the rent and sale thereof in accordance with the responsibilities of National Housing Agency."

702.50(c):

> "Upon approval of such application and the issuance if any, of any appropriate preference rating . . . the applicant and all successors in interest to the approved application . . . or to any property construction with the assistance thereof, shall be bound by the terms of such application and preference rating and of all applicable rules, orders and regulations."

702.51(a)(1) p. 1841:

"Private H-2 housing 'includes all construction hereunder which received priority assistance and authority to begin construction pursuant to H-2.'"

702.53(a) p. 1843:

"For the duration of the National Emergency declared by the President on Sept. 8, 1939, all private H-2 housing may be rented or disposed of by original or subsequent owner, only as provided in pars. 702.50-702.56.

(1) In the event that this application provides for sale the housing may be sold (or resold by a purchaser) at an amount not exceeding the approved sales price. . . . In the event the housing is to be sold 'approved sales price' shall be approved within the limits of—H-2."

702.56(a) p. 1844:

"The provisions of 702.50-56 shall be binding upon any person in addition to the original owner who shall hold any right, title or interest in or to any private H-2 housing."

24 CFR Sec. 801.1:

"It is mandatory for the builders, suing federal Housing Credit under NHA to make all their dealing with the public on a basis of good faith in which housing shall be offered in good faith . . . for sale or rent."

24 CFR Sec. 840.48(b):

"Any offenses (under NHA) committed prior to June 30 1947 (32 CFR, 1947 Supp.—1300.201 to 3000-269 Revised Procedural Regulations 3 as amended) shall be treated as still in force."

Due service of the within and receipt of three copies thereof is hereby acknowledged this _____ day of April, A. D., 1956.

_____

Attorney for Respondents.

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IN THE

Supreme Court of the United States

October Term, 1955

No. 887

EUGENE F. EVARTS, MONROVA S. EVARTS, EUGENE K. EVARTS,

Appellants and Petitioners,

vs.

C. J. JONES, C. S. JONES, JONES BROTHERS, C. J. JONES & ASSOCIATES, SAN ANTONIO HEIGHTS TRACT, JOHN DOE I TO V, JANE DOE AND DOE I TO V, BLACK & WHITE COMPANY I TO V, DOE & DOE CORPORATION I TO V, JOHN GREEN, doing business as Co-partnership,

Appellees and Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

The Facts Alleged in Petitioners' Pleading Disclose a Complete Lack of Jurisdiction.

The petitioners filed a suit in equity and for declaratory relief in the District Court of the United States, Southern District of California, Central Division, on January 28, 1955, and thereafter, respondents filed a Motion to Dismiss this the petitioners' suit, upon these grounds:

(1) That there was no diversity of citizenship between the appellants and the appellees.

(2) That the appellants had filed actions in the courts of the State of California and have exhausted all of their remedies of appeal in those actions and said state court decisions have become final.

This motion was heard by the Honorable Ben Harrison, United States District Court Judge, on March 7, 1955, and an order was made by him dismissing the petitioners' cause of action for lack of jurisdiction.

Thereafter, the petitioners filed an appeal in the United States Court of Appeals for the Ninth Circuit, from the order of the United States District Court, and thereafter, on December 9, 1955, the said Court of Appeals filed its decision affirming the judgment of dismissal of the District Court, because petitioners' complaint showed affirmatively that all parties, both plaintiffs and defendants, were citizens and residents of the State of California, and that the suit had to do only with the controversy arising out of the construction of a conditional sales contract, and that no Federal question was presented.

Thereafter, the petition for rehearing was filed with the said Court of Appeals, and on January 23, 1956, an order was made that the petition for rehearing be denied.

A summary of the respondents' grounds in support of its motion to dismiss is as follows:

No Diversity of Citizenship.

It is alleged in paragraph III of appellants' complaint that the appellants and the appellees are all residents of Los Angeles County, California.

No Federal Question or the Construction of Any Federal Statute Involved.

It is alleged in the complaint that the controversy between the appellants and the appellees arises out of the construction of a conditional sales contract entered into between C. J. Jones, one of the appellees, and Eugene F. and Monrova S. Evarts, two of the appellants, for the purchase of a parcel of real estate situated in the City of Long Beach, County of Los Angeles, State of California.

Appellants Have Exhausted All of Their Remedies of Appeal in the State Courts of California and the State Court Decisions Have Become Final.

It is alleged in appellants' complaint that three actions were commenced in the Superior Court of the County of Los Angeles and that judgments were rendered in each of those three cases by a judge of the Superior Court and in each case the judgments were adverse to the appellants and following the rendering of those judgments, an appeal was taken and a decision rendered by an Appellate Court affirming the judgments in each case.

A Brief Summary of the Three State Court Proceedings Referred to in the Complaint That Have Become Final.

(a) The first action was instituted by Eugene F. Evarts and Monrova S. Evarts in the Superior Court of Los Angeles County, when an amended and supplemental complaint for specific performance upon a parcel of property was filed by them on September 27, 1948. A demurrer to this amended and supplemental complaint was filed by the appellees on October 28, 1948, and this demurrer was heard on June 27, 1949, and was, by the Court on that day, sustained with ten days' leave to amend. No-

tice to appellants that the demurrer was sustained and that they were given ten days to amend was served on them on October 7, 1949. Thereafter the motion of the appellees for a judgment of dismissal after sustaining the demurrer with leave to amend, but no amendment filed, was heard on February 27, 1950, and a judgment or dismissal was signed on February 28, 1950. An appeal was taken to the District Court of Appeal, Second Appellate District, and on May 9, 1951, the decision of Division Three of that Court was filed affirming the judgment of dismissal and is reported in 104 Cal. App. 2d 109, 231 P. 2d 74.

(b) The second action was an action filed in the Superior Court of Los Angeles County by the appellees herein to quiet title to the same parcel of real estate as is described in appellants' complaint herein. That action was filed on September 19, 1950, and after service upon appellant, Monrova S. Evarts, a demurrer was filed by her alleging that another action was pending concerning this same parcel of real property. The action which she referred to as a pending action was the above mentioned first action. When the decision in that first case became final, the demurrer of Monrova S. Evarts was set for hearing and overruled and she filed her answer. The appellant, Eugene F. Evarts having been served and failed to appear, his default was entered thereafter on January 25, 1952. The case was tried before the Honorable George Francis and on February 13, 1952, said Judge signed Findings of Fact and Conclusions of Law and a judgment to quiet title in the appellees herein and against the appellants. An appeal was taken in that case to the District Court of Appeal and thereafter on December 2, 1952, a decision was filed affirming the Superior Court's

judgment. The decision is reported in 114 Cal. App. 2d 634, and in 250 P. 2d 671.

Thereafter a motion for a recall of the remittitur in that action was filed and on April 2, 1953, the court denied that motion.

(c) Eugene K. Evarts, one of the appellants herein is the adult son of appellants Eugene F. Evarts and Monrova S. Evarts and has alleged in paragraph XXIII of the complaint that a 90% interest in the property involved in this and the Superior Court cases was transferred to their son, Eugene K. Evarts, and he filed a quiet title action August 9, 1952, in the Superior Court of Los Angeles County against the appellees. The deed to the undivided 90% interest to said property, dated January 1, 1950, was not acknowledged until April 14, 1952, and was recorded the next day, April 15, 1952, in the office of the County Recorder of Los Angeles County. A notice of pendency of action in the second case above mentioned was recorded in the office of the County Recorder of said County on September 15, 1950.

This case was tried before the Honorable Joseph Maltby, Judge of the Superior Court of Los Angeles County on April 29, 1953, and on that date judgment was rendered for the appellee herein and against the appellant, Eugene K. Evarts. The trial court found that the appellee was the owner of and entitled to the possession of the real property and that appellant did not have any estate, right, title or interest whatsoever in or to said real property.

An appeal was taken in said action to the District Court of Appeal, Second Appellate District and a decision was rendered by the District Court of Appeal affirming the judgment of the Superior Court. This decision was filed on September 29, 1954, and is reported in 127 Cal. App. 2d 623, and 274 P. 2d 185.

ARGUMENT.

I.

In the Absence of a Diversity of Citizenship the District Court of the United States Has No Jurisdiction.

The District Court of the United States had no jurisdiction of this action unless there was an allegation in the complaint that a diversity of citizenship existed between the plaintiff and defendants. The appellants herein and plaintiffs in the District Court alleged in paragraph III of their complaint that not only were all of the plaintiffs residents of the County of Los Angeles, but that also that all of the defendants were residents of the County of Los Angeles, State of California. Therefore, it appeared on the face of the complaint that there was not an allegation of diversity of citizenship, but on the contrary a positive allegation that the plaintiffs and defendants were all residents of Los Angeles County. In the face of such allegation the United States District Court had no jurisdiction of the appellants' action.

U. S. C. A., Sec. 1332 A(1);

Salem Trust Company v. Manufacturers Finance Company, 264 U. S. 182, 68 L. Ed. 628, 44 S. Ct. 266.

II.

The Allegations of the Complaint Are Devoted Entirely to Facts Concerning a Controversy Over the Construction of Certain Provisions of a Conditional Sales Contract for the Purchase of a Parcel of Real Estate in the City of Long Beach and There Are No Allegations of Any Matters Which Raise Any Federal Question, and the District Court Accordingly Does Not Have Jurisdiction of This Action.

The appellants alleged in their complaint that they entered into a contract for the purchase of a parcel of real estate and that if interest had been computed in a certain way as they claim it should have been on the unpaid portion of the purchase price of the property, their status under the contract would have been different than as claimed by appellees. The state court agreed with the construction as placed upon the contract by the appellees, and held against appellants' construction. Therefore, the appellants were in default under the terms of their contract and their interest terminated.

There is no F. H. A. loan involved in this action or in any of the state court actions, as the appellees herein were not lenders or the appellants borrowers under any such loan. The conditional sales contract provided that the property was subject to a loan which if the appellants could meet certain qualifications and conditions could have assumed, but the appellants could not and did not meet these qualifications and others as contained in the conditional sales contract, so that they never came into the position where they were permitted to make payments

on the loan or have anything to do with it. Their sole and only obligation under this contract was to make the monthly payments as provided for thereunder. Therefore, the appellants' reference in the complaint and in the brief to Federal housing regulations are entirely irrelevant to the controversy that the appellants themselves started in 1948 by the filing of their complaint in the state court against the appellees.

The allegations in the complaint in this action are similar to those alleged in the pleadings filed by them in the state court actions and upon which evidence was presented by the appellants, both oral and documentary, to Judge Francis. The appellants now seek to have their case tried again by the United States District Court after the Superior Court has in one case ruled that their complaint did not state a cause of action and in another case found adversely to the claims and contentions of the appellants and in the third case that their adult son was not a purchaser in good faith of an undivided 90% interest in the property.

We, therefore, most respectfully submit that appellants' complaint fails to allege that their action arises under any particular article or section of the United States Constitution or under any particular act or section of any Federal law or statute and all that is alleged is the bare conclusion that a Federal question exists which is ineffective unless the matters constituting the appellants' claim for relief as set forth in the complaint on their face show or raise a Federal question.

The forms 2-b-oc contained in the appendix of forms under Rule 84 of the Rules of Civil Procedure indicate that general allegations of the existence of a Federal question are ineffective unless there are matters alleged

constituting the claim for relief which discloses or raises a Federal question. There are, of course, no allegations of any such matters in this complaint.

The only relief the appellants seek in this action, and it is the same relief they sought in the state court, is for a construction or interpretation as to the method of computing interest under their conditional sales contract for the purchase of the real property.

U. S. C. A., Sec. 1331;

Columbus R., etc. Co. v. Columbus, 253 Fed. 499, 39 S. Ct. 349, 249 U. S. 399, 63 L. Ed. 669.

The trial court's jurisdiction can only arise if the complaint alleges facts which specifically present a Federal question.

III.

It Appears on the Face of the Complaint in This Action That the Superior Court of Los Angeles County Rendered Judgment in Three Cases and That Appeals Were Perfected and the Appeal Courts Affirmed the Judgments in Each Case Adverse to the Appellants, and Those Judgments Have Become Final, Therefore This Court Is Without Power to Review or Set Aside Those State Court Judgments.

The appellants have alleged in paragraphs 19-24 of their complaint that actions were filed in the Superior Court of Los Angeles County, and that following the entry of judgments in that court, all of which were adverse to them, that appeals were perfected and that the Appellate Court affirmed the judgments of the Superior Court. It is therefore apparent that the appellants have exhausted all of their remedies in the state courts and as will be

noted in the summary of each of those three cases which we have set forth above, the judgments in each case have long since become final. The appellants now seek to have the United States District Court review or set aside those judgments of the state court which are between the same parties and over the same subject matter. The appellants in making this request disregard the well established principle of law that the Federal Court has no supervisory jurisdiction over the state courts, and that state court judgments may not be reviewed by a complaint in the Federal court.

McLain v. Lance, 146 F. 2d 341, *cert. den.* 65 S. Ct. 1183, 325 U. S. 855, 89 L. Ed. 1976;

Guy v. Utecht, 144 F. 2d 913;

Parker v. Carey, 135 F. 2d 205;

Howard v. Dowd, 25 Fed. Supp. 844;

Biggs v. Ward, 212 F. 2d 209.

Conclusion.

Jurisdiction of the Federal District Court is determined by the allegations of the complaint and the appellants have failed to allege any facts that confer such jurisdiction. Therefore, the judgment of the District Court to dismiss the above action should be affirmed.

Respectfully submitted,

GEORGE R. JOHNSON,

Attorney for Appellees and Respondents.